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Decision of the Martha's Vineyard Commission

DRI 584 - Cozy Hearth

Date: January 25, 2006
To: Zoning Board of Appeals, Town of Edgartown, MA
From: Martha's Vineyard Commission
Subject: Development of Regional Impact #584
Cozy Hearth Community Corporation
Project: DRI 584 – Cozy Hearth Subdivision
Owner: Cozy Hearth Community Corporation
Applicant: Cozy Hearth Community Corporation
Project Location: Watcha Path Road, Edgartown Map 25, Lots 10.1 (3 acres), 10.2 (3.5 acres), and 10.3 (4.4 acres). 10.9 acres total

1. SUMMARY

The Martha's Vineyard Commission (the Commission) hereby approves the granting of permits for the development as submitted in the application of the Cozy Hearth Community Corporation (Cozy Hearth) Post Office Box 2120, Tisbury, Massachusetts, 02568 for a project on Watcha Path, Edgartown, Massachusetts.

This Decision is rendered pursuant to a vote of the Commission on December 8, 2005 as modified by a vote of the Commission on January 19, 2006. The permit-granting authorities of the Town of Edgartown may now grant the request for approval of the Applicant's proposal in accordance with the conditions contained herein and may place further conditions thereon in accordance with applicable law, or may deny the request for approval.

2. FACTS

The project was referred to the Commission by the Zoning Board of Appeals of the Town of Edgartown, MA for action pursuant to Chapter 831 of the Acts of 1977, as amended (the Act) and the Commission's Standards and Criteria Administrative Checklist for Developments of Regional Impact, Sections 3.202 and 3.401a and was reviewed as such by the Martha's Vineyard Commission. The Application and notice of public hearing relative thereto are incorporated into the record herein. Martha's Vineyard Commission staff document exhibits are also incorporated into the record by reference.

Hearings: A duly noticed public hearing on the Application was conducted by the Commission on May 19, 2005 at the Stone Building in Oak Bluffs, MA pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831. The hearing was continued on July 14, 2005 at 7:30 P.M, was further continued on August 4, 2005 without taking testimony, was further continued on September 1, 2005 without taking testimony, was further continued on September 22, 2005, and was closed at the end of the October 20, 2005 session of the public hearing.

Description: The Cozy Hearth Community Corporation is a domestic corporation formed in May 2002. The articles of organization for the corporation filed with the application state that the purpose of Cozy Hearth is: To deal with real property for the purpose of creating a community containing affordable housing which qualifies under a state or federal housing subsidy program, to own and maintain common areas and facilities in the community, and to undertake all other activities authorized or permitted by law. The corporation is composed of a group of people who intend to live in the subdivision, several of whom work in the same company. The applicant anticipates that the housing will be subsidized under the Federal Home Loan Bank of Boston's New England Find (NEF) Program as well or through privately contributed funds through the Island Affordable Housing Fund.

The Cozy Hearth Community Corporation plans to subdivide 3 lots (10.9 acres) into 11 approximately one-acre lots in a three-acre zoning district through Chapter 40B (MGL). They are proposing three lots with houses to be available for families earning less than 80% Average Median Income (AMI), one lot with a resale restriction for a family earning less than 140% AMI, four lots with resale restrictions for families earning less than 150% AMI, and three lots at market rate. The three lots at 80% AMI will have houses built upon them and will be offered at lottery to residents of Edgartown. Members of the Cozy Hearth Corporation will own the remainder of the lots.

The Plan: The following plans and documents submitted by the Applicant and contained in the Commission's project file constitute "the Plan."

- "Plan of Land in Edgartown, MA: Prepared for The Cozy hearth Community Corp.", Scale 1" = 50'-0", consisting of one sheet prepared by Schofield, Barbini, and Hoehn Inc., State Road, Vineyard Haven, MA – July 28, 2005.
- "Cozy Hearth Community Corporation Declaration of Protective Covenants", October 13, 2005.
- "Cozy Hearth Community Corporation: Articles of Organization", May 3, 2005.

3. FINDINGS AND CONCLUSIONS

The purpose of the Commission, as set forth in Section 1 of the Act, is to "protect the health, safety and general welfare of island residents and visitors by preserving and conserving for the enjoyment of present and future generations the unique natural, historical, ecological, scientific and cultural values of Martha's Vineyard which contribute to public enjoyment, inspiration and scientific study by protecting these values from development and uses which would impair them, and by promoting the enhancement of sound local economies."

The Commission has reviewed the proposal as a Development of Regional Impact, using the procedures and criteria that the Commission normally uses in evaluating the benefits and detriments of such a proposal. The Commission has considered the Application and the information presented at the public hearing, including listening to all the testimony presented and reviewing all documents and correspondence submitted during the hearing and review period.

Based on the record and testimony presented therein, the Commission makes the following findings pursuant to Sections 14 and 15 the Act.

A. THE COMMISSION FINDS THAT THE PROBABLE BENEFITS OF THE PROPOSED DEVELOPMENT WOULD EXCEED THE PROBABLE DETRIMENTS, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(a) OF THE ACT.

A1 The Commission finds that the proposed development at this location is appropriate in view of the available alternatives (Section 15(a) of the Act.)

The Commission finds that this proposal addresses an important need on Martha's Vineyard for affordable housing and its negative impacts have been reduced or mitigated as much as is reasonably possible.

Although the Commission favors locating affordable housing projects involving increased density primarily in "smart growth" locations, such as close to town centers, it recognizes that the limited availability of land means that it is also necessary to have other modestly-sized projects scattered throughout all parts of the Island, without overly burdening any given neighborhood.

In approving this application, the Commission particularly noted the following aspects of the project.

- This is a cooperative effort of mostly Island families working together to create housing for themselves.
- The project meets relatively high standards of affordability in that eight of the eleven units are permanently affordable.
- All lots are approximately one acre, limiting the sense of overcrowding.
- The clustering of houses allows achievement of a large percentage of open space preservation on the property.
- The project was supported by the Edgartown Planning Board.

A2 The Commission finds that the proposed development would have a mixed impact upon the environment relative to other alternatives (Section 15(b) of the Act).

With respect to wastewater and groundwater, the Commission notes that Cozy Hearth will install a combination of composting toilets and denitrification systems to meet the MVC interim nitrogen-loading limit guidelines for protection of the water quality in the Oyster Pond watershed, and that the projected nitrogen loading may be considerably less than that which could be generated by typical residential development under existing zoning.

With respect to open space, natural community and habitat, the Commission finds that the construction of the project will impact a presently natural property. However, it notes the creation of a conservation restriction permanently protecting the open space and habitat of approximately two thirds of the property and the involvement of the Natural Heritage and Endangered Species Program to protect priority habitat and wildlife corridors.

With respect to night lighting and noise, the Commission notes that the project will add night lighting and noise to the neighborhood, although the night lighting has been mitigated.

A3 The Commission finds that the proposed development would have a mixed overall effect upon other persons and property (Section 15(c) of the Act).

With respect to traffic and transportation, the Commission finds that the project would have a minimal effect on public roads and would therefore not have a significant regional traffic impact. However, the Commission notes that the project will add traffic to Watcha Path, a single-lane private dirt road, and to the awkwardly configured intersection of Watcha Path, Oyster-Watcha Midlands Road, and the Edgartown – West Tisbury Road, increasing safety concerns and inconvenience. The Commission notes that other development in the area will also add to this problem and it notes Cozy Hearth's offer to work with neighbors to seek and help finance solutions.

With respect to scenic values, the Commission notes that the site is not visible from the Edgartown – West Tisbury Road.

With respect to character and identity, the Commission notes that the project will impact the rural quality in the immediate area, creating a more suburban character, although it notes the effort to cluster the development and choose building guidelines to reflect the pattern of development in the neighborhood and to preserve open space.

With respect to the impact on abutters, the Commission finds that the project will have a generally negative impact on abutters, particularly due to the increase in traffic and noise, noting that the visual and lighting impacts have been mitigated through vegetated screening and lighting design.

A4 The Commission finds that the proposed development would have a beneficial impact upon the supply of needed low and moderate income housing for Island residents (Section 15(d) of the Act).

The Commission finds that the proposal would provide eight permanently affordable homes offering housing to a range of income levels up to 150% Area Median Income.

A5 The Commission finds that the proposed development would have no significant impacts on the provision of municipal services or burden on taxpayers in making provision therefore (Section 15(e) of the Act).

The Commission notes that this development will have a limited though acceptable impact on the need for and cost of municipal services.

A6 The Commission finds that the proposed development would use efficiently and not unduly burden existing public facilities (other than municipal) or those that are to be developed within the succeeding five years. (Section 15(f) of the Act).

A7 The Commission finds that the proposed development does not interfere with the ability of the municipality to achieve the objectives set forth in the municipal general plan. (Section 15(g) of the Act).

The proposal conforms to certain objectives and policies of the 1990 Edgartown Master Plan, such as:

- "To spread and preserve the mixture of affordable housing in order to integrate and make new neighborhoods indistinguishable from existing neighborhoods (p.11)
- "Develop housing opportunities for both rental and purchase for moderate and low-income residents of Edgartown" (p.26)
- The proposal is less consistent with objectives calling for preservation of open space in open rural areas.

According to the 2004 Edgartown Community Development Plan:

- 4.3.2.F "The Town will encourage public or private development of affordable housing at increased density that is not currently allowed by zoning within certain areas of the town, provided that water resources and nitrogen-loading goals are met."
- This plan indicates what areas are most suitable for residential development, for which this property is not in the highest categories. However, it also acknowledges that: "On Martha's Vineyard, available land is so scarce and property values are so high that decisions on acquisition, say for open space preservation or the creation of affordable housing, will probably depend more on opportunity than on suitability. That is, if a piece of land is available, it might well make sense for a town or another entity to use it for open space or for affordable housing, even if it does not rate in the highest category in the suitability analysis."

A8 The Commission finds that the proposed development would not contravene land development objectives and policies developed by regional or state agencies. (Section 15(h) of the Act).

The Commission notes that in adding three low- and moderate-income homes, this project will help the town of Edgartown get closer to the Commonwealth's objective in Chapter 40B, the state statute that mandates each municipality to designate 10% of their year-round housing stock for subsidized low- and moderate-income housing. The Commission notes that the development is consistent with policies of the Martha's Vineyard Commission Regional Policy Plan, adopted by the vote of the Martha's Vineyard Commission, June 1991 related to the availability of affordable year-round housing to the Island community, though it is less consistent with the policies related to preservation of Vineyard character and farmland and having new land uses conform to traditional patterns.

In sum, after careful review of the plan and its attendant submittals and the testimony presented by the Applicant and others, the Commission has concluded that the probable benefits of this proposed development in this location exceed its probable detriments.

B. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT WOULD BE CONSISTENT WITH THE LAND DEVELOPMENT OBJECTIVES OF THE COMMISSION, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(b) OF THE ACT.

The requested project, as a whole, advances the Commission's land development objectives, as outlined in the Martha's Vineyard Commission Regional Policy Plan adopted by the Commission in June 1991, and as noted previously in section A8 of this decision.

C. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT IS CONSISTENT WITH MUNICIPAL DEVELOPMENT ORDINANCES AND BY-LAWS, TO THE BEST OF THE COMMISSION'S KNOWLEDGE.

The Commission has reviewed this development under the provisions of the Martha's Vineyard Commission Act, Chapter 831, including section 14[c], which requires that the Commission find that "the proposed development is consistent with municipal development ordinances and by-laws, or, if it is inconsistent, the inconsistency is necessary to enable a substantial segment of the population of a larger community of which the municipality is a part to secure adequate opportunities for housing, education or recreation". The Commission finds that, while this project is not consistent with local zoning, it significantly advances Islanders' opportunities to secure adequate housing as per Chapter 831 section 14[c], without unduly compromising other legitimate objectives of the Town's zoning bylaws and that, on balance and as conditioned, this project deserves the Commission's approval.

The project will be reviewed by the Town under the provisions of M.G.L. Chapter 40B (which allows an Applicant to supercede zoning requirements provided at least twenty-five percent (25%) of the units are price restricted as affordable) and the Town may approve the project with the granting of a comprehensive permit (40B). Granting of a conditional approval by the Martha's Vineyard Commission in no way impacts positively or negatively the Town's authority to grant or to deny this permit.

D. THE COMMISSION FINDS THAT THE SITE IS IN CONFORMANCE WITH THE REGULATIONS OF DISTRICTS OF CRITICAL PLANNING CONCERN, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(d) OF THE ACT.

The Commission notes that the proposed development site is not located within any Districts of Critical Planning Concern.

4. CONDITIONS

After reviewing the proposal for this Development of Regional Impact, the Martha's Vineyard Commission imposes the following conditions in order to increase the benefits and minimize the detriments of the project. The analysis of benefits and the resulting decision to approve the project is based on the proposal as modified by these conditions. These conditions form an integral and indispensable part of this decision. All references to the Applicant or Cozy Hearth refer to the Cozy Hearth Community Corporation, its successors and assigns, including the owners of the individual properties.

1. Acceptance of Offers

- 1.1. The Commission accepts all offers from the Cozy Hearth Community Corporation (Cozy Hearth) with respect to the implementation and operation of the development subject to this DRI – except where the offer is superceded by Commission conditions – including the obligation that all offers shall be binding on Cozy Hearth, and its successors and assigns, and shall run with the land. Items that derive their origin in an offer from the Applicant and that were accepted by the Commission are so noted.

2. Housing Affordability

- 2.1. As offered by the Applicant, Cozy Hearth shall build three, 3-bedroom houses approximately 1200 square feet each that will be permanently deed restricted to be occupied by occupants earning 80% or less of the Area Median Income for Dukes County. Cozy Hearth will sell these houses to qualifying occupants selected by means of a lottery, by the Edgartown Resident Homesite Committee, at prices to be determined by the Committee and State according to the methodology generally used for this purpose. The monitoring

agent for these houses, including with respect to the affordability restrictions at resale, will be the Edgartown Resident Homesite Committee or its successor or designee.

2.2. As offered by the Applicant, Cozy Hearth shall deed-restrict four (4) additional lots for 30 years [note: time limit superceded by condition 2.4] requiring that any resale during that time will be to occupants earning less than 150% of the Area Median Income for Dukes County, and shall deed-restrict one (1) additional lot for 30 years requiring that any resale during that time will be to occupants earning less than 140% of the Area Median Income for Dukes County.

- The monitoring agent for these lots will be the Dukes County Regional Housing Authority or its successor or designee in cooperation with the Edgartown Resident Homesite Committee.
- The sales price of any unbuilt restricted lot will be limited to the purchase price of the individual lot created by this proposal, plus 3% per year after the original purchase of that lot.
- If a lot is given to a family member or left in an estate, the inheritor does not have to be income qualified. [Note: this offer is superceded by condition 2.4]
- If a lot is sold to anyone, including a family member, the income restriction applies.

2.3. In addition to Condition 2.1 dealing with the three properties restricted to 80% AMI and to ensure perpetual affordability of these properties, the deed-restriction shall include language to the effect that after the first thirty years and for every twenty years thereafter, the deed restriction shall be renewed by either the monitoring entity, or by the Dukes County Regional Housing Authority or its successor.

- The Applicant shall execute a restriction to effect this condition satisfactory in form and substance to the Commission's counsel, which shall include such grants of a power of attorney to the public entities hereby empowered to renew the restriction as the Commission's counsel may require, ensuring that these entities shall be able to effectually extend such restrictions.
- The Applicant, its successors, and assigns shall not grant a lien or encumbrance to secure financing on the property unless said lien or encumbrance is (a) expressly subordinated to this restriction, or (b) subsequent in time to the recording of this restriction or (c) otherwise satisfactory in form and substance to the Commission's counsel.
- No certificate of compliance shall issue until such restriction has been recorded in the Registry of Deeds.
- In the case of a mortgage foreclosure or deed in lieu thereof, the property may not be offered to a person or family that does not meet the affordability restriction without the seller first offering any such property for sale to the Town and the DCRHA at the price described in the affordable housing restriction.
- The intent of this condition is that these three properties shall be restricted to occupants (owners and tenants) earning 80% of AMI in perpetuity. Therefore if, for any reason other than a sale pursuant to a mortgage foreclosure or deed in lieu thereof, the mechanism adopted to maintain the restrictions should lapse or otherwise become ineffective, no such property may be conveyed for consideration to a person or family

whose individual or aggregate gross family income is in excess of 80% AMI without the seller first applying for and receiving a change of condition from the Martha's Vineyard Commission.

2.4. In addition to Condition 2.2 dealing with the five properties restricted to 140 and 150% AMI: the income restrictions apply to gross family income; the occupancy of these premises upon resale by the initial and all subsequent owners shall be limited to those who qualify under these limits, and the properties shall be sold at prices to be determined using the methodology outlined in condition 2.1, using 140% or 150% instead of 80% in the calculation. To ensure the perpetual affordability of these properties, the Commission requires that this resale and rental restriction of these five properties be permanent at the same AMI to the greatest extent allowed by law, both at the time of the decision and in the future. This restriction is to be enforced by the following means, to be monitored by the Dukes County Regional Housing Authority:

- Should the Town of Edgartown adopt a by-law to enact the Martha's Vineyard Affordable Housing Covenants under Section 1 of Chapter 445 of the Acts of 2004 of the General Court, or should any other regulation or legislation authorize permanent affordable housing restrictions within the next thirty years, this permanence shall apply to these five properties and the owners thereof shall grant an irrevocable power of attorney to the Dukes County Regional Housing Authority, authorizing said Authority to execute and record in the Registry of Deeds such instruments as shall be effective to make such affordable housing restriction permanent. The grant of the power of attorney shall be satisfactory in form and substance to the Commission's counsel, and said deeds for these properties shall note that such a power of attorney has been granted to said Authority, and that the conveyance is subject to such power of attorney and to this decision and the conditions hereof.
- The Applicant shall not grant a lien or encumbrance to secure financing on the property unless said lien or encumbrance is either (a) expressly subordinated to this restriction, or (b) subsequent in time to the recording of this restriction. No certificate of compliance shall issue until such restriction has been recorded in the Registry of Deeds.
- Cozy Hearth shall include in the deed restriction for each lot language specifying that after the first thirty-year period and at the end of each subsequent twenty-year period, that Cozy Hearth assigns to the Dukes County Regional Housing Authority an irrevocable power of attorney to exercise a twenty-year renewal of the restriction, in form and substance satisfactory to the Commission's counsel.
- The property may be gifted to an immediate family member (spouse, child, parent, sibling, and grandchild) who is not income-qualified, but may only be occupied by a person or family who is income-qualified.
- The property may be inherited and occupied by an immediate family member who is not income-qualified.
- If the property is inherited by a non-immediate-family member who is not income-qualified, it may only be occupied by persons or families who are income-qualified.

- No Certificate of Compliance shall issue until such restrictions shall have been recorded in the Registry of Deeds.
- In the case of a mortgage foreclosure or deed in lieu thereof, the property may not be offered to a person or family that does not meet the affordability restriction without the seller first offering any such property for sale to the Town and the DCRHA at the price described in the affordable housing restriction.
- The intent of this condition is that these five properties shall be restricted to occupants (owners and tenants) earning 140/150% of AMI in perpetuity. Therefore if, for any reason other than a sale pursuant to a mortgage foreclosure or deed in lieu thereof, the mechanism adopted to maintain the restrictions should lapse or otherwise become ineffective, no such property may be occupied by a person or family whose individual or aggregate gross family income is in excess of 140/150% AMI without the grantor first applying for and receiving a change of condition from the Martha's Vineyard Commission, other than the inheritance by an immediate-family member described above.

3. Wastewater System

3.1. As offered by the Applicant, Cozy Hearth:

- Shall install only composting toilets on the number of properties specified by the MVC, and shall maintain them in good order, disposing of the liquid from the composting toilets exclusively by having a licensed hauler dispose of it in the Edgartown Wastewater Plant. Septic systems shall also be installed for disposal of "greywater" from these properties, in accordance with Title 5 and local regulations.
- Shall install denitrification systems (e.g. BioClere, FAST, etc.) designed to achieve a total nitrogen concentration no greater than 15 milligrams per liter to serve the properties that do not have composting toilets, and shall service these systems and maintain them in good order.
- Shall not install or allow to be installed on the subject property any wastewater system other than those approved by the MVC.

3.2 As offered by the Applicant, Cozy Hearth shall submit the following reports to the Edgartown Board of Health and the Martha's Vineyard Commission.

- On the operation of the composting toilets:
 - Inspection reports by the manufacturer, or an inspection provider licensed by the manufacturer, indicating that the systems are functioning properly, and that the liquid is being appropriately stored for off-site disposal. These reports shall also include all incident reports for any service calls other than routine maintenance.
 - Septage haulers' receipts from the treatment plant, identified by property, date, volume.
- On the operation of the denitrification systems:
 - Inspection reports by a maintenance provider licensed by the provider of the denitrification system,
 - Reports of samples taken at the distribution boxes and tested for total nitrogen concentration.

[Note: these offers are further qualified by condition 3.5]

These reports shall be submitted according to the following schedule.

- For the composting toilets: Beginning after the first occupancy of any dwelling unit built on the land which is the subject of this DRI decision, quarterly reports for the first year to be submitted no later than January 15, April 15, July 15, October 15, starting with the first of these following the first occupancy. After the first twelve months, annual reports to be submitted no later than the following January 15.
- For the denitrification systems, samples shall be taken quarterly for one year, beginning at the time of first occupancy, and annually thereafter, so long as the average of the quarterly results of total nitrogen not exceed fifteen (15) milligrams per liter. In the event that an annual sampling result exceeds fifteen (15) milligrams per liter, quarterly results shall be provided until such time as the average of four consecutive quarterly results has not exceeded fifteen (15) milligrams per liter.

3.3 As offered by the Applicant, Cozy Hearth agrees that the Edgartown Board of Health or the Martha's Vineyard Commission may decide that the wastewater system has failed in any of the following circumstances:

- Failure to submit reports according to the above schedule. However, the Edgartown Board of Health or the MVC must notify the Cozy Hearth Corporation of such failure in writing, in which case the Cozy Hearth Corporation may submit the report within 60 days of such notice. [Note: this time limit is modified in condition 3.6]
- Reports from septic haulers or from the manufacturer of the composting systems indicating that some or all of the liquid is not being disposed of in accordance with the MVC decision. [Note: This part of the offer is modified by condition 3.6.]
- The installation of any wastewater system other than that approved by the MVC.
- The failure to achieve or maintain an average total nitrogen concentration of fifteen (15) milligrams per liter or less from the denitrification system for two (2) consecutive years resulting in a total nitrogen output that the Edgartown Board of Health or the MVC calculates will exceed the nitrogen loading limit per acre per year specified in Condition 3.4.

3.4 As offered by the Applicant, in the event of failure, Cozy Hearth shall install and maintain on-site treatment that meets the MVC's interim nitrogen loading limit for the Oyster Pond watershed of 1.8 kg/acre per year, or the MVC nitrogen-loading limit in effect immediately prior to failure if this is greater than 1.8 kg/acre per year, provided that this can be done for no more than \$30,000 per household, indexed for inflation. [Note: This offer is qualified by condition 3.7]

- If the cost of this upgrade is greater than the budget limit, Cozy Hearth shall install the system that allows for the maximum total nitrogen reduction within that budget.
- Cozy Hearth's documents conveying rights of ownership or occupancy to the residential units to be built pursuant to this DRI decision shall reserve a right to impose liens on such units to secure the collection of no more than \$30,000 per household indexed for inflation per household to install a replacement or supplementary system to carry out its obligations under this paragraph. Such reserved right shall be in form and substance satisfactory to the MVC's counsel.

- 3.5 With respect to the offers accepted in condition 3.2 the Commission requires:
- All reports submitted to the Edgartown Board of Health as required in the "maintenance and monitoring agreement" shall contain test results for treated effluent sampled at the distribution box for pH, BOD, TSS, and Total Nitrogen.
 - All maintenance and monitoring agreements, operation contracts, and reports or event notifications resulting from the operation documents or conditions of approval shall be submitted to the MVC and the Edgartown Board of Health. Any termination of submittal of said documents to either the MVC or the Edgartown Board of Health by future owners/operators must be with the specific written approval of said party.
- 3.6 With respect to the offers accepted in condition 3.3 the Commission requires:
- The report indicating that some or all of the liquid is not being disposed of in accordance with the MVC decision can come not only from the septic haulers or from the manufacturer of the composting systems but also any other credible evidence;
 - Failure to submit written reports shall be deemed to be a failure criterion 30 days after of receipt of written notice from the MVC or the Edgartown Board of Health.
- 3.7 With respect to the offers accepted in condition 3.4:
- In the case of the failure of the original system, the three 80% AMI affordable homes shall each pay no more than one-third of the cost divided by 11 of a new on-site system.
- 3.8 The Commission requires the following wastewater system.
- There shall be no fewer than four (4) properties served exclusively by bi-level composting toilets and greywater systems, which may also be installed in any or all of the other houses if permitted by the Edgartown Board of Health.
 - All properties not served by composting toilet technology shall be served by an innovative/alternative wastewater treatment technology(s) capable of achieving nitrogen removal. It is critical that the applicant and future owner/operators of the innovative/alternative treatment equipment acknowledge and strive to achieve nitrogen removal that results in total nitrogen in the final effluent (at the distribution box) of no greater than 15 ppm total nitrogen.
 - The details of operation and maintenance of all wastewater disposal equipment, systems, and facilities shall be in the form of a maintenance and monitoring agreement approved by the Edgartown Board of Health and the respective innovative/alternative treatment equipment companies involved in the wastewater disposal process. Said maintenance and monitoring agreement shall be filed with the MVC within 10 days of approval of the agreement by the Edgartown Board of Health. The maintenance and monitoring agreement shall call for written reports to be submitted to the Edgartown Board of Health and the MVC at an interval of no less than every three months (quarterly) – to be submitted no later than January 15, April 15, July 15, October 15 – plus a year-end summary submitted by January 31 of the following year. The quarterly reports and year-end summary shall include, but are not limited to, total water volume

used in each dwelling as measured by a water meter(s) approved by the Edgartown Board of Health. Irrigation water shall be broken out in the reports and measured separately. The reports shall also include water quality testing of the potable water supply(s) to measure total nitrogen contribution from the water supply.

- The total wastewater and turf contribution of nitrogen for Cozy Hearth shall not exceed 1.8 kg/acre/year above ambient or background concentrations as averaged across the entire 11-acre land area. If the system(s) fail and must be replaced during the life of the facility(ies), or fail(s) to achieve nitrogen reduction sufficient to limit loading to 1.8 kilograms per acre per year, it(they) must be replaced with a system(s) with equal or better nitrogen reduction to the satisfaction of the Edgartown Board of Health, and subject to the same maintenance and monitoring agreement and terms described above.
- All by-product of the composting toilet systems must be removed from the site by a licensed septage hauler and disposed of at the Edgartown Wastewater Treatment Facility. All other methods of disposal are strictly prohibited.
- Nothing in these conditions shall prevent the Edgartown Board of Health from creating conditions of approval as part of the Disposal System Construction Permit application specific to operation requirements, monitoring requirements, and reporting requirements, for the purpose of clarifying or bringing system operation/reporting requirements into compliance with industry-accepted standards, but in no case shall the conditions of approval relax the total nitrogen limits.

4. Traffic, Parking, and Access

- 4.1. The Commission accepts the Applicant's offer to the effect that Cozy Hearth shall put \$5000 into escrow as a contribution to the cost of improving the intersection of Watcha Path and the Edgartown – West Tisbury Road. This contribution will be for the implementation of a road improvement plan approved by the MVC.
- 4.2. Each household of the Cozy Hearth development shall become and remain dues paying members of the road association (formal or informal) that exists along Watcha Path so long as they own a lot originally part of this DRI.
- 4.3. The Applicant shall make its best effort to work with the other members of the Watcha Path Road Association and the residents of Oyster-Watcha Road to resolve safety issues with their road and with the intersection of Oyster-Watcha Road and Edgartown-West Tisbury Road.
- 4.4. Owners and tenants shall be encouraged to use bicycles or the MVTA.

5. Landscaping

- 5.1. As offered by the Applicant:
 - All fertilizers shall be slow-release, water-insoluble nitrogen source types.
 - No synthetic pesticides including herbicides, fungicides and insecticides shall be used in the maintenance of landscaping.

- 5.2. The bands of land along the west and north edges of the property shall include a permanent no-cut zone at least 20' deep, which shall be documented in the plans(s) and deeds conveying each lot.
- 5.3. Cozy Hearth shall put \$2000 in escrow with the Edgartown Conservation Commission to be used for additional screening planting on abutters' properties on the north and west side. This shall be used at the request of the abutters, and shall be apportioned particularly to those abutters' properties most exposed to the development. Before any planting takes place on property protected by a conservation restriction, it must be approved by the holders of the conservation restriction.
- 5.4. All landscaping plants shall be native or native-compatible or to the satisfaction of the holder of the conservation restriction.

6. Building Location and Design

- 6.1. As offered by the Applicant, Cozy Hearth shall not build any buildings higher than 26 feet tall.
- 6.2. Each of the three 80% AMI affordability houses shall have a minimum interior habitable floor area of 1200 square feet.
- 6.3. The interior habitable floor area of any house shall not exceed 2500 square feet.
- 6.4. If the footprint of a house is larger than indicated on the approved plan, the house may not extend closer to any property lines with abutters than the distance shown on the approved plans referenced in this decision.
- 6.5. All buildings shall have pitched roofs with a minimum roof pitch of 6" per foot.
- 6.6. Exterior materials shall be white cedar shingles or cedar siding with natural wood or white trim. Roofs shall be grey shingles.
- 6.7. There shall be no guest houses.
- 6.8. Non-habitable accessory structures not greater than 15' high are permitted.

7. Energy Conservation

- 7.1. Buildings should be oriented and designed to promote maximum solar energy efficiency.
- 7.2. All new appliances shall be Energy Star.

8. Habitat

- 8.1. As offered by the Applicant:
 - Cozy Hearth shall create a Conservation Restriction on 67% of the property as identified in the Plan to permanently maintain it as a no-cut, no-build zone for habitat protection;
 - Cozy Hearth will comply with the terms of the management plan for this part of the property as set out by the Natural Heritage and Endangered Species Program, and any further requirements of this program.

- 8.2. The Applicant shall grant to each of the lots, and to the Edgartown Conservation Commission the power to specifically enforce this restriction in equity, and the Conservation Restriction shall comply with G.L.c.184, Sections 31-32 and shall be permanent.
- 8.3. The delimitation lines of the development envelopes and of the conservation area may be shifted up to 20' in any direction provided the houses are no closer to the abutters' property lines than they are in the approved plan, provided the total area of all development envelopes is not increased, and provided the total area of all conservation areas is not decreased.

9. Exterior Lighting

- 9.1. As offered by the Applicant:
- Exterior lighting on buildings shall be limited to that required by code;
 - Landscape lighting, if needed, shall extend not more than three feet above the ground;
 - Security lighting, if needed, shall be motion sensitive so as to be lit only when activity is present;
 - All exterior lighting shall be downward shielded to prevent direct light from escaping the property.
- 9.2. All outdoor lighting shall shine down only to prevent light spilling into the conservation area and onto abutting properties. All lights shall be non-attractive to insects. The lighting plan shall be to the satisfaction of the holder of the conservation restriction. No street lights shall be allowed.

10. Homeowners Association

- 10.1. There shall be a homeowners' association in which all properties shall participate that shall be responsible for maintenance of the subdivision road, for Cozy Hearth's share of the maintenance of Watcha Path, and for maintenance of the wastewater system. It shall be created before the first building permit is issued.

11. Implementation of Offers and Conditions

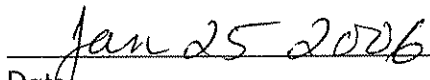
- 11.1. As offered by the Applicant, Cozy Hearth shall prepare and sign a legally binding agreement with the Martha's Vineyard Commission to implement the above offers and conditions before a Certificate of Occupancy by the Town of Edgartown is issued. The agreement shall be in form and substance satisfactory to the Commission's counsel, shall be binding on Cozy Hearth, and its successors and assigns, including owners of individual properties, and shall run with the land.
- 11.2. The agreement referred to in condition 11.1 shall include such instruments creating easements and restrictions as may be called for in the agreement.

These conditions are an essential part of this decision and shall be enforced as written. If the Commission finds it necessary to seek judicial relief to enforce the condition, the Applicant, or its successors in title at the time of such proceedings, shall pay the Commission's attorney's fees and costs incurred in obtaining judicial relief.

The Applicant must, consistent with this Decision, apply to the appropriate Town of Edgartown Officers and Boards for any local development permits which may be required by law. This Decision is written consistent with the vote of the Commission: December 8, 2005 and was approved by vote at the Commission meeting of December 15, 2005 and incorporates modifications adopted by the Commission on January 19, 2006.

Any party aggrieved by a determination of the Commission may appeal to Superior Court within twenty (20) days after the Commission has sent the development Applicant written notice, by certified mail, of its Decision and has filed a copy of its Decision with the Edgartown Town Clerk. The Applicant shall have two (2) years from the date of receipt of the Decision of the Martha's Vineyard Commission contained in this document to begin substantial construction. Should substantial construction not occur during said two (2) year period, this Decision shall become null and void and have no further effect. This time period may be extended upon written request from the Applicant and written approval from the Martha's Vineyard Commission.


Linda B. Sibley, Chairman


Date

Commonwealth of Massachusetts
County of Dukes County, Mass.

On this 25th day of January, 2006, before me,
Jo-Ann Taylor, the undersigned Notary Public, personally
appeared Linda Sibley, proved to me through satisfactory evidence of
identity, which was/were drivers' license to be the person(s)
whose name(s) was/were signed on the preceding or attached document in my presence, and
who swore or affirmed to me that the contents of the document are truthful and accurate to the
best of his/her/their knowledge and belief.

Signature of Notary Public

Printed Name of Notary
My Commission Expires

Jo-Ann Taylor
February 28, 2011

Attest:

Deanne E. Powers Register